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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

New York, N.Y.

4 v.

12 Cr. 0489 (LAP)

5 PAUL CALDER LEROUX,

6 Defendant.

7 -----x

8
9 December 6, 2018
4:12 p.m.

10 Before:

11 HON. LORETTA A. PRESKA,

12 District Judge

13
14 APPEARANCES

15 GEOFFREY S. BERMAN

16 United States Attorney for the
Southern District of New York

17 BY: MICHAEL LOCKARD

Assistant United States Attorney

18 Joseph DiBenedetto

Attorney for Defendant

19 XAVIER R. DONALDSON

20 Adjunct Attorney for Defendant

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1 THE COURT: United States against Paul Leroux.

2 Is the government ready?

3 MR. LOCKARD: Yes, your Honor. Good afternoon.

4 Michael Lockard for the government.

5 THE COURT: Good afternoon.

6 And is the defense ready?

7 MR. DONALDSON: Yes, your Honor. Xavier R. Donaldson
8 for Mr. Leroux. Good afternoon, your Honor.

9 THE COURT: Yes, sir.

10 MR. DiBENEDETTO: Hi, Judge. Joseph DiBenedetto.

11 THE COURT: Yes, sir.

12 All right. When we were last together, Mr. Leroux, I
13 gave you the opportunity to consult with Mr. Donaldson so that
14 you could get a second opinion. And has that happened?

15 MR. DONALDSON: Yes, it has, your Honor.

16 THE COURT: All right. And, counsel, do either of you
17 want to make a report?

18 MR. DONALDSON: I can.

19 THE COURT: Yes, sir.

20 MR. DONALDSON: I did speak with Mr. Leroux. He has
21 spoke to me rather thoroughly about his position on whether or
22 not counsel should be substituted. He has informed me in no
23 uncertain terms that he believes that counsel should not be
24 substituted. He wanted me to inform the Court of that. And
25 that he believes that any differences he has or had with

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1 current counsel are reconcilable I think was his words.

2 So, that was what he told me. I discussed this with
3 him at length. I told him what I thought the issues were and
4 the position I believe he put his current counsel in and I
5 understood his current counsel's position, and I really
6 understand it, actually. But Mr. Leroux is pretty adamant that
7 he believes that his current counsel is best suited for him to
8 go forward.

9 THE COURT: All right. And is that correct,
10 Mr. Leroux?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: Thank you. Is there any reason we
13 shouldn't continue forward with Mr. DiBenedetto representing
14 Mr. Leroux?

15 MR. DiBENEDETTO: Judge, if I may?

16 As I've outlined to the Court in my
17 October 17th letter, I'm sort of in a weird spot in the sense
18 that I'm not looking to disparage Mr. Leroux in any way. I
19 understand at some point in the future he is to appear before
20 this Court for sentencing. So, I'm sort of conflicted in terms
21 of what I can sort of bring forth to this Court's attention.

22 But I will direct the Court's attention to the letter
23 that Mr. Leroux forwarded to the Court. And on page 3, he
24 essentially explains --

25 THE COURT: Is this the letter around October 19th?

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1 MR. DiBENEDETTO: That is correct, Judge.

2 THE COURT: Yes, I have it.

3 MR. DiBENEDETTO: It is stamped received from the
4 Clerk's Office October 1st.

5 THE COURT: The first line says "Letter of
6 Transmittal," and then it says "Enclosed, please place this
7 document under seal," that letter?

8 MR. DiBENEDETTO: Yes.

9 THE COURT: Got it.

10 MR. DiBENEDETTO: On page 3 of the letter, Judge,
11 Mr. Leroux outlines --

12 THE COURT: Perhaps it is not the letter because it
13 doesn't have a page 3. Let's see.

14 Would you bring up here what you want me to look at?

15 MR. DiBENEDETTO: Sure.

16 THE COURT: And just point to it, if you would,
17 please.

18 MR. DiBENEDETTO: Here.

19 (Handing to the law clerk)

20 MR. DiBENEDETTO: Judge, what he outlines are three
21 errors in which I have been deficient. And essentially, as I
22 understand this, this has 2255 written all over it and is
23 concerning to me. If I continue -- first, I'll say that even
24 though this is couched in terms of some type of fee dispute, I
25 disagree. I don't believe that to be the case. I believe

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1 there to be a fundamental difference of opinion as to how to
2 proceed at sentencing. If there were not a fundamental
3 difference, I would have not been replaced by new counsel. He
4 would not have retained counsel subsequent to me and prior to
5 Mr. Donaldson, which he has -- he had, and that lawyer, for
6 whatever reason, withdrew from this case prior to filing a
7 notice. But it makes me uncomfortable moving forward knowing
8 that anything that I do is sort of going to be added to this
9 list, which is, in my humble opinion, clearly not accurate.

10 So, it's alarming to me. You know, he has made
11 representations that I quit. That is certainly not true,
12 Judge.

13 I'm not sure how much more detail your Honor would
14 require from me.

15 THE COURT: All right. Did you want to direct my
16 attention to these two paragraphs at the top of the page that
17 you opened?

18 MR. DiBENEDETTO: Sure, Judge.

19 (Pause)

20 THE COURT: Thank you. Is there something you wanted
21 to add?

22 MR. DiBENEDETTO: The only thing I'll add, Judge, is
23 assuming if this Court is considering replacing me, as an
24 officer of the Court, I'm not simply walking away from this
25 case. My intent and my duty is to bring new counsel up to

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1 speed, and I'm more than happy to do that. That's -- nothing
2 further.

3 THE COURT: OK. Thank you.

4 Mr. Donaldson, did you have an opportunity to discuss
5 with Mr. Leroux the three items that are numbered in the
6 conclusion portion of this letter?

7 MR. DONALDSON: Yes, I did, Judge.

8 THE COURT: Do you have any comment -- go ahead.

9 MR. DONALDSON: Can I grab my glasses?

10 THE COURT: Of course. I know the problem.

11 OK. I'll ask you, sir, whether you have any comment
12 on these matters that you can share and if you have any
13 thoughts on what Mr. DiBenedetto said?

14 (Pause)

15 MR. DONALDSON: First, yes, I did discuss these
16 conclusory -- sections of the conclusory part of this letter.
17 Regarding what Mr. DiBenedetto said, again, I do appreciate and
18 understand what he's saying. I have been there myself, so I do
19 understand the part about the 2255 and the concern of that --
20 the serious concern for all of us defense attorneys. This is
21 a, from what I was able to determine over the last month or so,
22 a very involved case that has a lot of tentacles apparently all
23 over the place. So normally I would just tell the Court, you
24 know, I'm prepared to handle any case that I get, and I am.
25 This is no different.

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1 I am a little concerned with Mr. Leroux indicating to
2 me that Mr. DiBenedetto is in the best position to represent
3 him at sentencing. And I did inform Mr. Leroux that I believe
4 sometimes in these cases the sentencing phase is sometimes the
5 most important phase, particularly in light of what's going on
6 with Mr. Leroux. Sometimes we have pretrial and trial and
7 sentencing, and very often sentencing is the most important, in
8 my humble opinion.

9 So, there is a lot involved here and there is a lot
10 that Mr. Leroux must concern himself with. And I think I told
11 Mr. DiBenedetto several weeks ago when I called him that
12 generally I would just walk in, take it from you, and I'll just
13 do it. But I must concern myself with my client; I appreciate
14 that. So, Mr. DiBenedetto does have a legitimate concern with
15 what was written by Mr. Leroux. I've expressed that to
16 Mr. Leroux, that he had put Mr. DiBenedetto in a very
17 precarious situation. I have explained that to him thoroughly.

18 Him getting new counsel at this juncture and for him
19 to get sentenced sometime soon I think would be difficult. In
20 order for me to get up to speed with everything I think that
21 needs to happen to get him ready for sentence is going to take
22 a while, because I think there was a lot going on before me
23 that I don't know about yet but I'm sure there was a lot based
24 on what I've seen.

25 I don't have an opinion as to whether or not

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1 Mr. DiBenedetto attended many important government -- I mean,
2 number three, I am sure he did. I don't have -- I told
3 Mr. DiBenedetto, I told Mr. Leroux the same thing. I have
4 known him for a long time. I have no doubt that he performed a
5 Herculean task in this case. I have no doubt about that. And
6 I have no doubt that he will continue. I have no doubt about
7 that as well.

8 So, I guess I have to defer to the Court as to this
9 peculiar situation.

10 THE COURT: Thank you.

11 Yes, sir.

12 MR. DiBENEDETTO: If I could just briefly respond?

13 Respectfully, Judge, sentencing -- if I understand
14 Mr. Leroux's position, it's that he wants to keep me on board
15 because I know this case the best, and bringing a new counsel
16 up to speed will take some time. But respectfully, Judge, it
17 contradicts everything that's in the letter before this Court.
18 He's essentially put forth that I've been absentee. So I'm not
19 sure if I'm absentee how I can be the person best suited to
20 bring this case forward for sentencing.

21 It's unfortunate -- the situation is unfortunate,
22 Judge, and if it was something that I believe could be worked
23 through, I would stick it out. There is no ifs, ands or buts
24 about it. I would do my best sort of to push forward. But I
25 honestly believe that this is -- it is unfortunate and places

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1 myself in a difficult position knowing that every move I make
2 going forward will be scrutinized. And if Mr. Leroux actually
3 agreed with my strategy moving forward, we wouldn't be here
4 today.

5 Thank you.

6 THE COURT: All right.

7 Does the government have any comment?

8 MR. LOCKARD: So this may not be necessary, but if it
9 is necessary for the Court to be able to discuss the content of
10 the letter in more detail, certainly the government can be
11 excused from that portion of the proceedings, if it is
12 important to be able to have a more frank conversation about
13 the contents of the letter. But that's more of a procedural
14 issue.

15 I think as a substantive matter, if -- you know, if
16 Mr. Leroux knowingly and intelligently and voluntarily and with
17 the advice of additional counsel wishes to remain with the
18 counsel that he has, Mr. DiBenedetto, I think it may be
19 appropriate for the Court to allocute him with respect to his
20 satisfaction with counsel's prior performance. And whether if
21 in light of additional time to reflect on events and additional
22 advice from second-opinion counsel, he has come to view those
23 matters in a new light, I think that may be appropriate to put
24 on the record. But I think ultimately it is up to, you know,
25 the Court's decision based on its assessment of Mr. Leroux's

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1 informed decision.

2 THE COURT: Thank you.

3 Anything else, gentlemen?

4 MR. DiBENEDETTO: Nothing further, Judge.

5 THE COURT: All right. Thank you.

6 MR. DONALDSON: No, your Honor. Thank you.

7 THE COURT: Yes, sir.

8 Mr. Leroux, you've heard everything that all the
9 lawyers have said today, is that right, sir?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: And you remember that you said some things
12 in your letter about Mr. DiBenedetto which hardly put him in a
13 good light, right?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: OK. And you will understand where that
16 could give him some degree of concern, right?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: And you also heard, sir -- had the
19 opportunity to talk with Mr. Donaldson and get a second
20 opinion, right?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: OK. Do you need any more time to confer
23 with Mr. Donaldson?

24 THE DEFENDANT: No, your Honor.

25 THE COURT: All right. So you've heard what the

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1 choices are that you have. You may proceed with
2 Mr. DiBenedetto, if that's what you want. On this one
3 occasion, though, I will give you the opportunity to change
4 lawyers, if you want, and however much time Mr. Donaldson needs
5 to prepare for sentencing will easily be given. So, those are
6 your choices.

7 I have to be sure, though, that if you decide that you
8 want to proceed with Mr. DiBenedetto, you are satisfied with
9 his services and you are satisfied that he is going to do a
10 good job for you in sentencing. Do you understand that, sir?

11 THE DEFENDANT: Your Honor, I believe there is
12 sufficient time before sentencing to reconcile any remaining
13 legal differences that may still exist. So, I do understand.

14 THE COURT: All right. But I'm going to ask you
15 again, then, when we next see each other, to be sure that you
16 are confident in Mr. DiBenedetto's services. All right?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: OK. So it's your decision at this point
19 that you would like to continue with Mr. DiBenedetto; is that
20 right, sir?

21 THE DEFENDANT: It is. Yes, your Honor.

22 THE COURT: Thank you.

23 Does the government wish me to inquire further of
24 Mr. Leroux?

25 MR. LOCKARD: I think that is sufficient, your Honor.

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1 THE COURT: OK. Does either lawyer at the back table
2 wish me to inquire further of Mr. Leroux?

3 MR. DiBENEDETTO: No, Judge.

4 THE COURT: All right. Then we will continue with
5 Mr. DiBenedetto representing Mr. Leroux.

6 Gentlemen, when would you like to return? I think
7 we'll have a presentence status conference so that I can be
8 certain that Mr. Leroux is confident in Mr. DiBenedetto's
9 representation. When would you folks like to do that?

10 MR. LOCKARD: Your Honor, if I make one -- I don't
11 have a proposed date for a presentencing status conference, but
12 to the extent that we're working backwards from a sentencing
13 date, we had previously set March 19th as a control date for
14 sentencing, and Mr. DiBenedetto had at that time raised a
15 scheduling conflict that was unknown whether it would be moved
16 or not.

17 THE COURT: Right.

18 MR. LOCKARD: I know Mr. DiBenedetto is scheduled to
19 be on trial at that time, so it may make sense to alter our
20 scheduling calendar -- our sentencing calendar and then pick a
21 status conference based on that.

22 THE COURT: All right. May I inquire when, about, you
23 would like sentencing?

24 MR. DiBENEDETTO: Judge, may I propose something a bit
25 different, if it is OK with the Court?

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1 THE COURT: Let's hear it.

2 MR. DiBENEDETTO: Is it OK if I met with Mr. Leroux
3 and then conferred with the government once I have a better
4 idea of sort of where we stand?

5 THE COURT: Certainly. When would you like to inform
6 us how you want to proceed?

7 MR. DiBENEDETTO: Is two weeks OK, Judge?

8 THE COURT: Certainly.

9 All right. Can you do that by letter?

10 MR. DiBENEDETTO: Absolutely.

11 THE COURT: All right. So we'll hear from you and
12 you'll propose time periods.

13 MR. DiBENEDETTO: Yes, Judge.

14 THE COURT: Yes, Mr. Donaldson.

15 MR. DONALDSON: Your Honor, just so I can keep the
16 process flowing, I guess, I just asked Mr. Leroux whether he
17 wanted me to I guess stand by after he discusses with
18 Mr. DiBenedetto what they are going to do. If they don't work
19 it out, I'll just -- I'll come back, I guess, if the Court
20 wants me to.

21 THE COURT: All right. So why don't we continue your
22 representation at least that long so that we have the benefit
23 of your counsel.

24 Anything further today, gentlemen?

25 MR. LOCKARD: Not from the government, your Honor.

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1 MR. DONALDSON: No, your Honor.

2 THE COURT: All right. Thank you, friends. Good
3 afternoon.

4 MR. DiBENEDETTO: Nice to see you, Judge.

5 THE COURT: You, too.

6 (Discussion off the record)

7 THE COURT: Mr. DiBenedetto, I am going to return your
8 letter to you.

9 MR. DiBENEDETTO: Thank you, Judge.

10 (Adjourned)

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